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Transcript of the Testimony of **LARRY W. BYBEE**

Date: June 25, 2004

Case: POCA TELLO DENTAL v. INTERDENT SERVICE

CV 03-450-E-LMB

Printed On: July 6, 2004

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional)
corporation,)

Plaintiff,)

vs.)

Case No. CV-03-450-E-LMB

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)

Defendant.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)

Third Party Plaintiff.)

vs.)

POCATELLO DENTAL GROUP, P.C,)
an Idaho professional)
corporation; DWIGHT G.)
ROMRIELL, individually;)
LARRY R. MISNER, JR.,)
individually; PORTER SUTTON,)
individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL)
individually; ERROL ORMOND,)
individually; and ARNOLD)
GOODLIFFE, individually,)

Third Party Defendants.)

ORAL DEPOSITION OF LARRY W. BYBEE
Taken on June 25, 2004

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1 BE IT REMEMBERED that on the 25th day of June,
2 2004, at the hour of 1:30 p.m. the deposition of LARRY W.
3 BYBEE, produced as a witness at the instance of the
4 defendant in the above-entitled action now pending in the
5 above-named court, was taken before Paul D. Buchanan CSR
6 #7, and notary public, State of Idaho, in the law offices
7 of Lowell N. Hawkes, Chartered, 1322 East Center,
8 Pocatello, Bannock County, Idaho.
9
10 WHEREUPON, the following proceedings were had:
11
12 LARRY W. BYBEE,
13 called at the instance of the defendant, having been
14 first duly sworn, was examined and testified as follows:
15 EXAMINATION
16 BY MR. KAPLAN:
17 Q. Could you please state your name and spell
18 your last name?
19 A. Larry Waldon Bybee, B-Y-B-E-E.
20 Q. Have you had your deposition taken before, Dr.
21 Bybee?
22 A. Yes, I have.
23 Q. How many times?
24 A. Twice.
25 Q. What kinds of cases were those?

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1 A. One was a business case -- both were related
2 business.
3 Q. What kind of business?
4 A. One was a mining business and one was a pizza
5 business.
6 Q. Did you have a chance to meet with your lawyer
7 and go over the deposition procedures today?
8 A. Yes, I did.
9 Q. Did you look at any documents?
10 A. I did, yes.
11 Q. What documents did you look at?
12 A. I looked at a list of, I think there were 16
13 documents.
14 Q. You looked at documents that we had shown to
15 Dr. Romriell earlier today?
16 A. I believe so.
17 Q. Any other documents?
18 A. No.
19 Q. Why don't I go through the deposition
20 procedure just to make sure that we are on the same page.
21 Do you understand that you took an oath to tell the truth
22 today that has the same effect as an oath that you would
23 take in a court of law?
24 A. I do.
25 Q. What does that oath mean to you?

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1 A. Being honest, I value honesty.
2 Q. Do you understand that you would be subject to
3 penalties of perjury if you don't tell the truth, do you
4 understand that?
5 A. Yes.
6 Q. And that this is a case pending in the United
7 States Federal District Court?
8 A. Yes.
9 Q. And, as you might have noticed, the court
10 reporter is taking down everything that we say, so it's
11 important that we understand each other. Would you agree
12 to let me know if there is something about a question
13 that you don't understand?
14 A. I will.
15 Q. Thank you. And another aspect of the court
16 reporter taking things down is nods or uh-huhs or
17 huh-huhs don't show up in the transcript, so would you
18 try to say yes or no, for example?
19 A. I'll do my best.
20 Q. People forget. Now, there will likely be
21 objections to the form of a question, but do you
22 understand that you do need to answer questions unless
23 your lawyer, Mr. Hearn, instructs you not to?
24 A. Yes.
25 Q. And that as long as there is no question

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1 pending, which means as long as there is no question that
2 I have asked that you haven't answered, you have a right
3 at any time to take a break and talk to your lawyer or
4 for any other reason?
5 A. Yes, I understand that.
6 Q. Are there any questions about the deposition
7 procedure before we go on?
8 A. No.
9 Q. Where do you live, Dr. Bybee?
10 A. Do you want the address?
11 Q. Yes.
12 A. 9658 West Heather Road, Pocatello, Idaho
13 83204.
14 Q. What is your phone number?
15 A. 208-233-7899.
16 Q. And do you have a business address?
17 A. Yes, I do.
18 Q. What is that?
19 A. 716 Yellowstone, Pocatello 83201.
20 Q. And what's the name of that business?
21 A. Kidds Dental.
22 Q. K-I-D-D-S?
23 A. Yes.
24 Q. Is that a dental practice?
25 A. Yes, it is.

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1 Q. Let's go through your background a little bit.
2 Where and when did you graduate from high school?
3 A. Omaha, Nebraska, 1971.
4 Q. What did you do after you graduated from high
5 school?
6 A. Went to Oregon State, Brigham Young University,
7 Creighton Dental School.
8 Q. Did you get a degree from Oregon State?
9 A. No, I did not.
10 Q. Did you get a degree from Brigham Young?
11 A. No, I did not.
12 Q. Did you get a degree from Creighton?
13 A. Yes, I did.
14 Q. What kind of degree was that?
15 A. D.D.S.
16 Q. Have you had any formal education after
17 getting your D.D.S. from Creighton?
18 A. No.
19 Q. What year did you get your D.D.S.?
20 A. 1978.
21 Q. What did you do then?
22 A. Came to Pocatello, Idaho, and practiced
23 dentistry.
24 Q. Why did you come to Pocatello?
25 A. I lived here earlier in my life.

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1 Q. When you came to Pocatello to practice
2 dentistry, did you work for another dentist?
3 A. No, I worked with my brother, Dr. Darryl
4 Bybee.
5 Q. He had an established office in Pocatello?
6 A. No, we started together.
7 Q. And how long did you work with your brother?
8 A. Four and a half years.
9 Q. What did you do then?
10 A. Went into the pizza business.
11 Q. And what was the name of that business?
12 A. Mama Julianne's for a year and a half and then
13 it became Mama's Pizza.
14 Q. And you were working in the pizza business
15 full time?
16 A. Yes.
17 Q. How long did you do that?
18 A. Until 1990, about eight years.
19 Q. And in 1990 did you get back into the practice
20 of dentistry?
21 A. Yes, I did.
22 Q. And with what entity?
23 A. I was asked by the Pocatello Dental Group to
24 join the practice out at the mall as an associate.
25 Q. And was that a full-time or part-time

3 (Pages 6 to 9)

Page 10

1 position?
2 A. Full time.
3 Q. How long did you stay a full-time dentist with
4 the Pocatello Dental Group?
5 A. Until February of '96.
6 Q. Then what did you do in February of '96?
7 A. I retired.
8 Q. How long did you retire?
9 A. About a year.
10 Q. So what did you do in '97?
11 A. In July of '97 Dr. Russ Misner asked me to
12 join his practice.
13 Q. And this is at Pocatello Dental Group?
14 A. Yes.
15 Q. What do you mean join his practice?
16 A. He asked me to come and help him treat
17 children.
18 Q. So you were going to see patients who were
19 already coming to him, was that the idea?
20 A. Correct.
21 Q. As opposed to patients coming to other
22 Pocatello Dental Group dentists, were you going to see
23 any of their patients?
24 A. No, children only. I had worked with Russ in
25 late 19 -- I am trying to remember. I am just trying to

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1 remember when my wife was killed, this is what it all
2 keys around. I think it was late -- I don't know, '95 or
3 '96. I worked with him while I was still at the group
4 part time.
5 Q. When you were at the group from 1990 to 1996,
6 did you work as a general dentist?
7 A. Yes.
8 Q. And you saw adults as well as children?
9 A. Mostly adults but I saw some children, yes.
10 Q. So from 1997 you went back to working at Dr.
11 Misner's practice. How long did you do that?
12 A. Until March 15 of 2004.
13 Q. Then what did you do?
14 A. I went and built a new office here in
15 Pocatello.
16 Q. When you say built a new office, is it a new
17 building or were you remodeling an existing space?
18 A. It's an existing space, so leasehold
19 improvements.
20 Q. Had it been a dental office previously?
21 A. No.
22 Q. That's the space at 716 Yellowstone?
23 A. Yes.
24 Q. When did you start remodeling that space?
25 A. The day that construction started was March

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1 22, 2004.
2 Q. And do you have a lease of that space?
3 A. I don't understand what you are asking.
4 Q. Is that a leased space?
5 A. Yes.
6 Q. And who is the lease in the name of?
7 A. Orthodontic Centers of America.
8 Q. Do you sublease from Orthodontic Centers of
9 America?
10 A. Yes, I do.
11 Q. I guess the question I was getting at is when
12 I say do you sublease, is it a particular business or is
13 it you personally or who is the sublessee?
14 A. Valley Dental, doing business as Kidds Dental.
15 Q. Valley Dental is a corporation?
16 A. Yes, it is.
17 Q. And are you a shareholder of that corporation?
18 A. Yes, I am.
19 Q. Are there other shareholders?
20 A. No, there are not.
21 Q. Are you an officer of that company?
22 A. Yes.
23 Q. President?
24 A. President.
25 Q. Are there other officers?

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1 A. Yes.
2 Q. Who?
3 A. Russ Misner.
4 Q. What is his position?
5 A. Secretary.
6 Q. When did your office actually open for
7 business?
8 A. The first patient was June 11.
9 Q. Did you make requests for transfer of patient
10 records prior to June 11?
11 A. Yes.
12 Q. When was the first time you made such a
13 request? Was it sometime in April?
14 A. I saw patients at my brother's office around
15 the first of April, so requests could have been made in
16 late March or early April.
17 Q. So for the period from the beginning of April
18 until June 11 you were seeing patients at your brother's
19 office; is that right?
20 A. Yes.
21 Q. And what name does your brother do business
22 under?
23 A. Just Darryl Bybee, D.D.S.
24 Q. Is it a professional corporation?
25 A. I don't know.

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1 Q. Does Dr. Misner have any kind of interest in
2 your brother's business?
3 A. I don't know.
4 Q. Now, Dr. Misner also does business as Kidds
5 Dental, correct?
6 A. Correct.
7 Q. He has an office in Burley?
8 A. That's correct.
9 Q. Is his business also Valley Dental or does he
10 have another formal corporate name?
11 A. It's Valley Dental doing business as Kidds
12 Dental in Burley.
13 Q. So Valley Dental has two offices, one in
14 Pocatello and one in Burley?
15 A. Yes.
16 Q. And Dr. Misner is not an owner of Valley
17 Dental?
18 A. No, he is not.
19 Q. Is Dr. Misner an employee of Valley Dental?
20 A. He has a contract agreement.
21 Q. He has a written contract?
22 A. Yes.
23 Q. And he is also an officer of the company?
24 A. Yes.
25 Q. Does Dr. Misner have another business for

Page 15

1 which he practices dentistry besides Valley Dental?
2 A. I don't know the answer to that.
3 Q. Now, physically where you practice, do you
4 practice solely in Pocatello?
5 A. Me personally?
6 Q. Yes.
7 A. Yes.
8 Q. And Dr. Misner, does he also practice out of
9 your Pocatello office?
10 A. He has been there.
11 Q. And he has been there to treat patients?
12 A. Yes.
13 Q. If you opened on June 11, how soon thereafter
14 was Dr. Misner there to treat patients?
15 A. He saw patients on June 11.
16 Q. Is there a regular schedule for when he is in
17 Pocatello, or how often is he there?
18 A. We have a schedule, yes.
19 Q. And how many days a week is he in Pocatello?
20 A. He is scheduled in three days a week.
21 Q. Does he also have a regular schedule for
22 practicing in Burley?
23 A. Yes, he does.
24 Q. How many days does he practice there?
25 A. Four days a month, four to five days a month.

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1 Q. Prior to the opening of your Kidds Dental
2 office in June, did Dr. Misner practice exclusively in
3 Burley after he left Pocatello Dental?
4 A. Yes, he did.
5 Q. Do you know what kind of schedule he had then,
6 how many days a week he was working?
7 A. Four to five days a month.
8 Q. Do you have any specialty certification?
9 A. In dentistry?
10 Q. Yes.
11 A. No, I do not.
12 Q. You are a licensed dentist?
13 A. Yes.
14 Q. In what states?
15 A. State of Idaho.
16 Q. Dr. Misner does have a specialty
17 certification, correct?
18 A. Yes, he does.
19 Q. In what specialty?
20 A. Pediatric dentistry.
21 Q. How many employees does Kidds Dental have?
22 A. Fourteen.
23 Q. Are there other dentists besides you and Dr.
24 Misner?
25 A. Dr. Johnson, an orthodontist, will be there

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1 later this year.
2 Q. Do you have a contract with Dr. Johnson?
3 A. We are working on drawing that up.
4 Q. Dr. Johnson was formerly at Pocatello Dental
5 Group?
6 A. Yes.
7 Q. Now, was Dr. Misner involved at all in hiring
8 Dr. Johnson?
9 A. No.
10 Q. That's solely your involvement?
11 A. Yes. You are talking about hiring a dentist.
12 The contract is he is going to lease space from us, so we
13 are not per se hiring him, we are providing space for him
14 and he will pay for that space. He will have his own
15 employees, own supplies.
16 Q. Will he sign an employment agreement with your
17 company?
18 A. No, not unless recommended by our lawyer.
19 Q. Have you ever been convicted of a felony?
20 A. No.
21 Q. Any crime involving dishonesty?
22 A. No.
23 Q. Just to finish up your background, what
24 happened to the pizza business?
25 A. Couldn't sell enough pizza; it went bankrupt

5 (Pages 14 to 17)

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1 in 1990. Darn good pizza, too.
2 Q. So then you are what's known as a general
3 dentist; is that right?
4 A. Yes.
5 Q. Now, are there other general dentists in
6 Pocatello who see children besides you?
7 A. Well, I don't know that for a fact, but I
8 would assume.
9 Q. Do you know for a fact that any of them do?
10 A. No.
11 Q. To your knowledge, does Dr. Corey Snow see
12 children?
13 A. I don't know.
14 Q. Do you take Medicare and Medicaid?
15 A. Yes.
16 Q. Do you know whether or not other dentists in
17 Pocatello who see children take Medicare or Medicaid?
18 A. Directly, no, I do not.
19 Q. You don't know one way or another, correct?
20 A. Correct.
21 Q. Of the staff in your Kidds Dental office, do
22 you have people who formerly worked for Pocatello Dental
23 Group?
24 A. Yes.
25 Q. Who?

Page 19

1 A. Thirteen out of the fourteen.
2 Q. Why don't you just list the names of the ones
3 you can remember.
4 A. Joril Hillman, Penny Lish, Nelda Morrison,
5 Avrey (phonetic) Petersen, Tamara Simmons, Christy
6 Dewinter (phonetic), Cami Kinney, Cheri Howell, Kim
7 Iverson, Megan Misner.
8 Q. When did Ms. Hillman leave Pocatello Dental,
9 do you know?
10 A. They were all let go on March 15.
11 Q. So then all of them, however many there were,
12 were dismissed by Pocatello Dental; is that your
13 testimony?
14 A. Yes.
15 MR. HAWKES: Were they Pocatello Dental
16 employees or InterDent employees?
17 THE WITNESS: They were InterDent employees.
18 MR. HAWKES: Who let them go?
19 THE WITNESS: InterDent. The other one was
20 Melanie Connet (phonetic).
21 Q. And she was never employed at the Pocatello
22 Dental practice in Pocatello?
23 A. She was an employee of InterDent.
24 Q. When did she leave?
25 A. I don't know that.

Page 20

1 Q. Sometime before March 15?
2 A. After.
3 Q. And how did she come to work at your company?
4 A. She filled out an application.
5 Q. Do you know if she was working for InterDent
6 when she filled out that application?
7 A. I do not.
8 Q. Now, let's talk about the steps by which you
9 and Dr. Misner set up Kidds Dental. Who had the idea of
10 leaving Pocatello Dental Group to set up this Kidds
11 Dental practice?
12 A. I think that that was provided by InterDent.
13 Q. InterDent suggested you leave and start a new
14 practice?
15 A. Indirectly when they filed bankruptcy and
16 started mishandling patients, yes, that was what fostered
17 the idea that it was time to look at other avenues.
18 Q. The idea was yours, not InterDent's, though;
19 is that correct?
20 A. Correct.
21 Q. And you mentioned mishandling patients. Are
22 you talking about credit type issues, payment issues?
23 A. I am talking about taking them off of recall
24 lists, calling them over, sending them to collections
25 when they owe \$8.37, refusing to see patients in pain

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1 directed by the receptionists who are under the direction
2 of InterDent, refusing to see a children with a swollen
3 face because the parents can't pay.
4 Q. Now, is that something you personally saw or
5 is it something that you heard about?
6 A. I saw it.
7 Q. Do you know when that occurred?
8 A. February of this year.
9 Q. And do you recall the name of the patient?
10 A. I do not. We did see them.
11 Q. So they were treated by you at the Pocatello
12 Dental Group office?
13 A. Yes.
14 Q. Do you recall other specific incidents of
15 patients in pain not being treated?
16 A. Not specifically.
17 Q. Let's go back, then, when was it that you or
18 Dr. Misner had the idea of going out and forming this
19 Kidds Dental group practice?
20 MR. KERL: I object to the form of the
21 question. I don't think that's his prior testimony or an
22 accurate statement.
23 A. Rephrase the question.
24 Q. Did you or Dr. Misner come up with the idea of
25 going out and forming the Kidds Dental group practice?

6 (Pages 18 to 21)

Page 22

1 A. Yes.
2 Q. Whose idea was it, yours or his?
3 A. (Shrugs shoulders.)
4 Q. Something you came up with together?
5 A. Yes, it was a together thing.
6 Q. When did you come up with that idea?
7 A. Probably late 2003.
8 Q. Do you recall when you gave notice that you
9 were going to leave Pocatello Dental Group?
10 A. October or November of 2003.
11 Q. Was that in writing?
12 A. Yes.
13 Q. Who was it provided to in writing?
14 A. To the president of the Pocatello Dental
15 Group.
16 Q. That's Dr. Greg Romriell or was it Dr. Misner
17 at the time?
18 A. I don't remember. I think it was Dr.
19 Romriell.
20 Q. And did both you and Dr. Misner provide notice
21 at the same time?
22 A. I don't believe so.
23 Q. Who gave notice first?
24 A. I don't remember. I would have to look at the
25 documents to see that.

Page 23

1 Q. And by the documents, you mean notice letters?
2 A. Notice letters.
3 Q. When you gave your notice letter, did Dr.
4 Romriell or anybody else at Pocatello Dental Group do
5 anything to stop you from leaving?
6 A. No.
7 Q. Do you know if anyone at Pocatello Dental
8 Group did anything to stop Dr. Misner from leaving?
9 A. I don't know that.
10 Q. Were there any discussions with Dr. Romriell
11 or others at Pocatello Dental Group to the effect of,
12 hey, don't go, we would like you to stay, was there
13 anything like that?
14 A. No.
15 Q. So there was no request from them that you
16 stay; is that right?
17 A. There was only requests at the end for me to
18 stay longer to treat patients, until the current office
19 at 716 Yellowstone opened.
20 Q. And that problem was solved by seeing patients
21 at your brother's office; is that right?
22 A. It was a Band-Aid, it wasn't solved.
23 Q. It was taken care of temporarily; is that
24 fair?
25 A. It was taken care of -- I couldn't see the

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1 number of patients that needed to be seen at my brother's
2 office, so it was at least mitigated.
3 Q. Was there any request made of Dr. Misner to
4 stay temporarily to see patients or to come in and see
5 patients?
6 A. I don't know of that directly.
7 Q. Indirectly had you heard that?
8 A. (Witness shakes head negatively.) Well, Russ
9 offered, the same as I did, to see kids for free at the
10 Pocatello Dental Group until such a time as the other
11 office was available.
12 Q. What happened to that offer?
13 A. It was rejected by InterDent.
14 Q. And how do you know InterDent rejected that
15 offer?
16 A. Because I was told by Bruce Call in a phone
17 conversation.
18 Q. We started off talking about how you and Dr.
19 Misner formed your Kidds Dental practice. You came up
20 with the idea and then what was the first concrete step
21 that you took towards putting that practice together?
22 A. We flew back to New Orleans to talk to
23 Orthodontic Centers of America.
24 Q. And why did you do that?
25 A. For funding issues.

Page 25

1 Q. Did you get funding from them?
2 A. Yes.
3 Q. And did you present a business plan to them by
4 which you got funding?
5 A. No, presented a business plan to Wells Fargo
6 Bank and received funding there, also.
7 Q. What did you present to Orthodontic Centers of
8 America, if anything?
9 A. Just an idea.
10 Q. Did you give them anything in writing?
11 A. No.
12 Q. This business plan that you presented to Wells
13 Fargo, when did you present that?
14 A. January of 2004.
15 Q. And do you have a copy of that?
16 A. Not with me.
17 Q. To your knowledge, does Dr. Misner have a copy
18 of it?
19 A. No.
20 Q. Did you have the only copy?
21 A. I had a copy, Wells Fargo and Bank of Idaho
22 had a copy.
23 Q. And did the business plan make projections as
24 far as revenue?
25 A. Yes.

7 (Pages 22 to 25)

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1 Q. And what sort of revenues did you project?
2 A. The first year 1.1 million.
3 Q. Now, of that 1.1 million, a very high
4 percentage of that would have been generated from
5 Pocatello as opposed to Burley, correct?
6 A. Probably 80 percent. That 1.1 also included
7 Dr. Johnson in there, also.
8 Q. Did you make projections beyond the first
9 year?
10 A. Yes, out to 2006.
11 Q. Do the revenues go up as the years go on?
12 A. Yes.
13 Q. What was the projection for the second year?
14 A. Oh, 1.25, something like that, and the last
15 year was just over 1.4.
16 Q. Did you make projections about the numbers of
17 patients you would be seeing?
18 A. I don't remember that.
19 Q. How was the 1.1 million calculated, how did
20 you come up with that number?
21 A. Based on what we had done in the past at
22 Pocatello Dental Group.
23 Q. So it was based on an -- was it based on an
24 expectation that a percentage of the patients you saw at
25 Pocatello Dental Group would see you in your new

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1 practice?
2 A. Yes.
3 Q. And what percentage was that?
4 A. About 60 percent.
5 Q. And when I say patients seeing you, I meant
6 you and Dr. Misner together. Does that change your
7 answer?
8 A. No.
9 Q. Are all of these projections based on you and
10 Dr. Misner and Dr. Johnson together?
11 A. Yes.
12 Q. And the 60 percent number, how did you come up
13 with that?
14 A. Reached up and grabbed it (indicating).
15 Q. Best estimate?
16 A. Best guess.
17 Q. In the less than a month you have been open,
18 how many patients have you been seeing?
19 A. Twenty a day last week -- or this week.
20 Q. And the week before?
21 A. Less than ten a day.
22 Q. And how many days a week are you open?
23 A. Monday through Friday.
24 Q. So you would have seen about a hundred
25 patients last week and about 50 the week before; is that

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1 correct?
2 A. No, I saw about 80 patients this week and
3 about 30 the week before. We weren't open five full days
4 last week.
5 Q. And do you have patients scheduled for next
6 week?
7 A. I hope so.
8 Q. Do you know how many?
9 A. No, I do not.
10 Q. How many days do you plan to be open next
11 week?
12 A. Five days.
13 Q. And the same the following week?
14 A. I'd have to have a calendar.
15 Q. But for the July 4 holiday in there somewhere.
16 Do you plan to keep your office open full time for the
17 foreseeable future?
18 A. Yes.
19 Q. And would you expect this 80 patients a week
20 number to go up as time goes on?
21 A. Yes.
22 Q. What would full capacity for you be?
23 A. Oh, 130 per day.
24 Q. So that would be 900 per week -- no, wait, you
25 are not open five days --

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1 A. Well, we are scheduled five days, we are not
2 always open five days.
3 Q. What would be that be a week, what would your
4 expectation be, how many patients would you see a week?
5 A. 120 times four, 480.
6 Q. Was it four or five days a week?
7 A. The office is open five days, we work four;
8 some days we will work five. Some days we are off
9 Thursday, some we are working.
10 Q. Are there days that you work and Dr. Misner
11 doesn't and vice versa, or do you both take the same day
12 off?
13 A. No, we take different days off -- well, it's
14 an open schedule. He is scheduled in Burley and then
15 I'll be here scheduled. We work most the time together
16 when we are here in Pocatello.
17 Q. Of the over a hundred patients you have seen
18 so far, have any of them told you that they are going to
19 go back to Pocatello Dental Group?
20 A. No.
21 Q. Have any of their parents told you that?
22 A. No. They told me that they would not go back
23 there. They are not treated very nicely to get their
24 records. InterDent employees do not treat them very nice
25 when they show up with a request for records.

8 (Pages 26 to 29)

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1 Q. What do they tell you about how they have been
2 treated?
3 A. They are very rude and very short, tell them
4 they don't have time and if they ever get around to it,
5 they will send the records.
6 Q. Has InterDent in fact sent the records that
7 you requested?
8 A. Yes, they have, as far as I know.
9 Q. Of the over hundred patients you have seen
10 already, what percentage of them are former Pocatello
11 Dental Group patients?
12 A. I would have to make a guess.
13 Q. Is it a pretty high percentage?
14 A. Probably above 60 percent, right at 60, 65
15 percent.
16 Q. Is that your best estimate?
17 A. Yes.
18 Q. Now, have you done any kind of advertising?
19 A. No -- we are in the phone books.
20 Q. Other than the phone books, have you done any
21 sort of advertising or solicitation of patients?
22 A. We put a notice in the paper that we had left
23 the group and that we'd be seeing patients later in
24 Pocatello and Burley.
25 Q. What paper?

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1 A. The Burley -- whatever the Burley paper is
2 called, and the Post Register in Idaho Falls, and the
3 Idaho State Journal.
4 Q. When did you --
5 A. I actually think in the Twin Falls paper,
6 also.
7 Q. When did you put that ad in the newspapers?
8 A. April, the first week in April and the third
9 week in April.
10 Q. Are you currently running that ad?
11 A. No.
12 Q. Do you plan to run it again?
13 A. No.
14 Q. Now, you got some financing from --
15 A. Orthodontic Centers.
16 Q. Did you also get financing from Wells Fargo?
17 A. Yes.
18 Q. Did Dr. Misner supply any of the capital for
19 this new business?
20 A. No.
21 Q. When did you sign your lease?
22 A. December 9.
23 Q. Who signed it?
24 A. I did.
25 Q. Did you put up any of your own money in this

Page 32

1 business?
2 A. Yes.
3 Q. What percentage of it is financed?
4 A. 95.
5 Q. And how much did you invest in it?
6 A. About \$30,000.
7 Q. Take a look, please, at Exhibit No. 4. Just
8 for your information, what we have done is redacted the
9 names of patients because we don't have a protective
10 order entered. Is this the form of request for dental
11 records that you are using at your office?
12 A. Yes.
13 Q. And is this your current address and business
14 name, Kidds Dental, 716 Yellowstone Avenue, Pocatello?
15 A. Yes, it is.
16 Q. And that's about two miles from the Pocatello
17 Dental Group office?
18 A. Approximately, yes.
19 Q. And it may be hard to tell with the names
20 redacted, but do these appear to be request for dental
21 records forms that you sent over to Pocatello Dental
22 Group?
23 A. How do I answer that? They appear to be.
24 Appear is not a very strong word.
25 Q. Is there anything about them that makes you

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1 think that they are not?
2 A. Yes.
3 Q. What?
4 A. Just the position on the paper, it's got a fax
5 number up here (indicating).
6 Q. So the way it was copied gives you some
7 concern?
8 A. Yes.
9 Q. But you in fact did get records from Pocatello
10 Dental Group in response to requests for release of
11 dental records forms that such records be sent to the
12 offices of Kidds Dental?
13 A. I did request records from the Pocatello
14 Dental Group, yes, I did.
15 Q. And you got those records?
16 A. As far as I know.
17 Q. Now, I am going to show you a document that
18 was produced by Dr. Misner but not mark it as an exhibit
19 because it does have patient names on it. For the
20 record, this is Bates stamped LRM 000072 through 88, and
21 are these also requests for dental records forms that you
22 use?
23 A. Yes.
24 Q. Now, some of them, for example, the first
25 page, request that records be sent to Burley. Did you in

Page 34

1 fact request that some records be sent to Burley in
2 addition to Pocatello?
3 A. Yes.
4 Q. How is it that you decided to send the records
5 one place or another?
6 A. Well, I would assume that these are Burley
7 patients.
8 Q. So there is some process of decision making
9 where you use the Burley form for Burley and the
10 Pocatello form for Pocatello?
11 A. Yes.
12 Q. But looking at page Bates stamped LRM 000079,
13 is this a request for records to be transferred to your
14 Pocatello office?
15 A. That's what it appears to be, yes.
16 Q. And there is a fax line, Holy Rosary Catholic
17 Church. Do you know if you have a patient associated
18 with that entity?
19 A. I don't know.
20 Q. Now, do you know what kind of revenue you and
21 Dr. Misner generated at Pocatello Dental in 2003?
22 A. Yes.
23 Q. What's that?
24 A. I only know -- it's very difficult because
25 there is no record keeping, there is no way to track

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1 records with InterDent. They do not allow you to look at
2 any of the books. So the only thing I can do is give you
3 the reported number. Whether it's accurate or not, I do
4 not know.
5 Q. What is the reported number?
6 A. Just under 1.7 million -- in 2003?
7 Q. Yes.
8 A. Right at 1.3 million.
9 Q. Was 1.7 2002?
10 A. Yes.
11 Q. How about 2001, do you remember that?
12 A. Right around 1.4.
13 Q. Now, do you have a specific reason to doubt
14 the accuracy of these numbers?
15 A. Any time someone is unwilling to show you
16 deposits so you can match numbers, yes, I have reason to
17 wonder whether the books are being cooked.
18 Q. And the reason you have is because you can't
19 see the back-up information?
20 A. Absolutely.
21 Q. Is there anything else that makes you think
22 that the numbers are inaccurate?
23 A. No.
24 Q. Take a look at what's been marked as Exhibit
25 No. 7, please. First of all, have you seen what we have

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1 marked as Exhibit No. 7 before?
2 A. I glanced through it quickly.
3 Q. Today?
4 A. Yes, sir.
5 Q. Do you recognize the handwriting on the second
6 page? Is that Dr. Misner's?
7 A. I would say it's similar to his.
8 Q. Do you recognize that phone number?
9 A. That is my cell phone number.
10 Q. Does Dr. Misner know your cell phone number,
11 does he call you on your cell phone?
12 A. Yes, he does.
13 Q. Now, this document is dated August 14, 2003.
14 On the second page, middle paragraph, there is a
15 reference to inadequate trained staff. Do you believe
16 you had an adequate trained staff at that time?
17 A. Absolutely.
18 Q. Had you had some recent turnover at that
19 point?
20 A. In January of that same year we met with Dan
21 Horrocks, an InterDent employee, the manager at the
22 Pocatello Dental Group, told him we had three girls
23 leaving. They were kind enough to give us notice, one
24 was pregnant, having a baby in July or August; one was
25 going to school, and one was moving to Washington.

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1 Having pediatric dental assistants is not as
2 easy as having adult dental assistants. You have to have
3 more than a spit sucker. You have to deal with patient
4 behavior and you have got to be able to work with
5 children. So it takes a lot of time to adequately train
6 a pediatric dental assistant. So we made that request.
7 Nothing was done with that. What Dan told me was he
8 approached Kevin Webb on that and Kevin Webb said, no,
9 that's not how we hire employees, we do not hire them
10 eight months in advance.
11 We made another request of Dan in April of
12 2003 and, again, Kevin vetoed the request for
13 employees --
14 Q. Let me stop you. You know Kevin vetoed that
15 because --
16 A. Dan said so.
17 Q. Keep going.
18 A. Then in June of 2003 Russ and I met in the
19 quiet room of the pediatric practice at the Pocatello
20 Dental Group with Bruce Call and Barbara Henderson and
21 again told them we are running out, we will have to shut
22 down the number of patients we see if we do not have
23 trained dental assistants, and that was in June of 2003.
24 Nothing was done. We gave them, I think there is a
25 document that stated that they had until July or August,

10 (Pages 34 to 37)

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1 mid August sometime to give us two trained pediatric
2 dental assistants or we would have to shut back the hours
3 that I work.
4 Q. You did that in writing?
5 A. Yes.
6 Q. And who did you give that writing to?
7 A. Barbara.
8 Q. Was it a letter?
9 A. Yes. All those requests were ignored.
10 Q. Now, we have been talking about training. Is
11 it fair to say it's hard to find already trained
12 pediatric dental assistants in Pocatello?
13 A. Yes.
14 Q. So they would need to be trained on the job?
15 A. Yes. That's why we gave notice in January.
16 That's also why you see the huge decrease from 2002 to
17 2003.
18 Q. We will get to that. Now, the next sentence
19 says, The Pedo. and Orth -- is that orthodontic
20 department?
21 A. Yes.
22 Q. -- will be altering the patient schedules and
23 decreasing the hours of Dr. Bybee due to that lack of
24 adequately filled staff positions.
25 So the reason why the revenues went down is

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1 you decided you were going to see fewer patients,
2 correct?
3 A. Yes, we made the decision to see fewer
4 patients so the patients we did see would get adequate
5 treatment to receive the standard of care that they are
6 entitled to receive.
7 Q. So the InterDent office staff were still
8 willing to schedule more patients for you but you decided
9 that you didn't feel you could see more patients; is that
10 right?
11 A. Yes, that's my call or Dr. Misner's call.
12 Q. You did have some trained staff, correct?
13 A. Yes.
14 Q. And you had enough trained staff to see some
15 patients, right?
16 A. Yes.
17 Q. And the question, then, is whether you had
18 enough trained staff to see more patients; is that right?
19 A. We did not have; it's not a question in my
20 mind, to safely and adequately see those children,
21 absolutely, we did not.
22 Q. Look at Exhibit No. 8, please. Do you
23 recognize Exhibit No. 8?
24 A. I believe this is my employment agreement.
25 Q. And this was the employment agreement when you

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1 went back to work at Pocatello Dental the second time?
2 A. Yes.
3 Q. And it's dated October 8, 1996. Would that
4 have been about when you started?
5 A. Yes.
6 Q. Now, there are initials on the bottom of every
7 page. Are those your initials?
8 A. Yes, they are.
9 Q. And on Page 8, is that your signature?
10 A. Yes.
11 Q. And do you recognize the signature for Idaho
12 Dental Group, PA?
13 A. I think that says David Sutton.
14 Q. He was the president of the group at the time?
15 A. Yes.
16 Q. Look at Page 3, Article IV, Termination,
17 Section 4.1
18 A. Start over again.
19 Q. Page 3, Section 4.1.
20 A. Okay.
21 Q. Either party may terminate this agreement by
22 giving the other party a 45-day written notice of
23 termination. Did you do that?
24 A. Yes, I did.
25 Q. Now, go to 4.3 on the next page. Covenant Not

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1 to Compete. It states, "If for any reason this agreement
2 is terminated, provider shall, for a period of two years
3 after termination, be prohibited from providing dental
4 benefits or dental care within a twenty mile radius of
5 the location of any office at which group engages in the
6 provision of dental benefits or dental care."
7 Now, sticking with that sentence only, you
8 haven't complied with that; correct?
9 A. Sticking with that sentence only, taking it
10 out of context, out of the entire paragraph?
11 Q. Let's just stick with that for sentence now.
12 You haven't complied with that, right?
13 MR. HEARN: Objection, calls for a legal
14 conclusion, complying with. You may answer.
15 Q. In your nonlawyer's understanding, have you
16 complied with that sentence?
17 A. No.
18 Q. And why not?
19 A. Because I am practicing dentistry.
20 Q. Did you make a decision not to comply with
21 that sentence?
22 A. Yes, because I don't need to comply with that
23 sentence, because it was breached on the other end of it.
24 Q. When you say you don't need to comply with
25 this sentence, are you referring to the last part of

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1 this, this 4.3, the last sentence there?
2 A. Yes.
3 Q. And when you say it's breached, does that mean
4 that you weren't regularly scheduled three or more days
5 per week at the office?
6 A. I was not.
7 Q. And that was because you chose not to work
8 three or more days per week, correct?
9 A. No, that was because InterDent failed to staff
10 me adequately to see patients more than three days a
11 week.
12 Q. And in your judgment you decided that you
13 could not see patients three or more days per week,
14 correct?
15 A. Could not safely treat those children with the
16 staff that we had.
17 Q. Did you get anyone else's opinion about that?
18 A. I don't need another one's opinion. Dr.
19 Misner also had the opinion. He told me that I would not
20 be working anymore.
21 Q. Did you ask any outside dentists whether you
22 were correct in that determination?
23 A. No. They are my patients. I am going to
24 determine the care here in the State of Idaho. InterDent
25 has never, in my opinion, been concerned with patient

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1 care. They are concerned with dollars only.
2 MR. KAPLAN: I move to strike that as
3 nonresponsive.
4 Q. 4.6, Solicitation of Employees, take a look at
5 it, please.
6 Do you see there is a restriction on making an
7 offer of employment to any person employed by the group
8 or subsidiary or affiliate of the group?
9 A. Yes.
10 Q. Have you complied with that?
11 A. Yes.
12 Q. Why do you believe you complied with that?
13 A. I never solicited any employee to come work
14 for me.
15 Q. Did you hire any employee?
16 A. I hired employees, yes. I did not solicit
17 them. They came to me, they filled out applications. I
18 never once spoke to an employee at the Pocatello Dental
19 Group to come work for me.
20 Q. Other than the last name that you gave us that
21 you hired who filled out the application after March 15,
22 she was employed at Pocatello Dental Group when she
23 filled out that application, right?
24 A. Yes, but she came to Kidds Dental to fill out
25 the form.

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1 MR. KERL: Also, I am going to object because
2 I think the question presumes that these employees are
3 employees of Pocatello Dental Group. They are in fact
4 employees of ISC.
5 Q. And these former employees at the Pocatello
6 Dental Group for ISC, do they also work with Dr. Misner?
7 A. Do they currently work with Dr. Misner?
8 Q. Yes.
9 A. Yes.
10 Q. They weren't just hired to work for you, they
11 were hired to work for Dr. Misner as well?
12 A. They were hired to work for Kidds Dental.
13 They are actually employees of Orthodontic Centers of
14 America. And they were hired by Orthodontic Centers of
15 America.
16 Q. And do some of these employees, for example,
17 function as Dr. Misner's dental assistant?
18 A. Yes.
19 Q. Are any of these employees hygienists?
20 A. One.
21 Q. And which one is that?
22 A. Nelda Morrison.
23 Q. And does she work with Dr. Misner as well as
24 with you?
25 A. We are a true group.

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1 Q. She works for both of you?
2 A. Yes, she works for Orthodontic Centers of
3 America.
4 Q. Now, just out of curiosity, is it a
5 requirement, since you are working with Orthodontic
6 Centers of America, that you have an orthodontic dentist
7 in your practice?
8 A. No.
9 Q. And do you have a written agreement with
10 Orthodontic Centers of America to provide services for
11 you?
12 A. Yes.
13 Q. What kind of services do they provide for you?
14 A. Employee, marketing, financial, accounting,
15 record keeping, leasehold, improvements, build-out,
16 design, architecture.
17 Q. Do they own the improvements or do you own
18 them?
19 A. I own them.
20 Q. They just help you with acquiring them?
21 A. Yes. Valley Dental owns them, not I.
22 Q. Is any of the equipment in the Pocatello
23 office Dr. Misner's personal property?
24 A. Yes.
25 Q. Such as?

12 (Pages 42 to 45)

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1 A. Ask that question again.
2 Q. What equipment in your Pocatello office
3 belongs to Dr. Misner?
4 A. A small refrigerator and one curing light.
5 Q. That's it?
6 A. Yes.
7 Q. Are you familiar with a Dr. Michaelson?
8 A. Yes.
9 Q. Did he used to work at Pocatello Dental Group?
10 A. Yes, he did.
11 Q. And when he left Pocatello Dental Group, he
12 went to work in Burley, correct?
13 A. I believe so.
14 Q. Now, Burley is more than 20 miles from
15 Pocatello?
16 A. Yes.
17 Q. And in fact Pocatello Dental Group enforced a
18 noncompete agreement with him, correct?
19 A. I don't know that.
20 MR. KAPLAN: Let's take a short break.
21 (Short recess.)
22 Q. Dr. Bybee, do you feel that you need to
23 clarify a prior answer you gave on the record?
24 A. Yes. You asked earlier whether there was a
25 written employment agreement with Dr. Misner and Valley

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1 Dental and I believe I answered yes. I don't think that
2 that's correct.
3 Q. You have a word of mouth agreement with Dr.
4 Misner?
5 A. Yes.
6 Q. Do you plan to put that employment arrangement
7 in writing at some point?
8 A. Well, there is a lot of documents that were
9 signed as far as setting up those type of things; and
10 whether that employment agreement was in there, I'd have
11 to look over and see for sure. But, yes, there will be
12 buy-sell agreements, if they haven't already been in
13 place. I don't know, I don't remember.
14 Q. You said buy-sell agreement --
15 A. Employment agreement, excuse me.
16 Q. Do you have buy-sell agreements in your
17 practice?
18 A. No.
19 Q. Now, Orthodontic Centers of America, they are
20 apparently in the same business as InterDent; is that
21 right?
22 A. They are a practice management company.
23 Q. They are one of InterDent's competitors; true?
24 A. Well, I wouldn't say so because InterDent
25 usually goes with general dentists and OCA is orthodontic

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1 and pediatric practices.
2 Q. Going back to your employment agreement,
3 Exhibit No. 8, has Pocatello Dental Group taken any steps
4 to enforce the noncompete provision in that agreement?
5 A. No. They actually -- they don't want to see
6 those patients, so they are glad that there is someone in
7 town to be able to see them, the children.
8 Q. Now, there is an arbitration provision, 8.5 in
9 this agreement. Has Pocatello Dental Group instituted an
10 arbitration against you?
11 A. No, they have not that I am aware of.
12 Q. Look at Exhibit No. 16, please. Have you seen
13 Exhibit No. 16 before?
14 A. I saw it earlier today.
15 Q. Was this a letter sent by your lawyer to
16 Pocatello Dental Group's lawyer?
17 A. Yes.
18 Q. Your lawyer is Mr. Hearn?
19 A. Yes, he is.
20 Q. There is a reference to a letter to Jim Price
21 as counsel for the group dated October 6, 2003. Do you
22 recall such a letter?
23 A. Yes.
24 Q. Do you have a copy of it?
25 A. Not on me.

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1 Q. In your file somewhere?
2 A. Yes, I believe.
3 Q. Do you know, has that been provided to --
4 A. In my files or with the attorney or on record
5 with InterDent.
6 Q. Would Dr. Misner also have a copy of that
7 letter?
8 A. I don't know.
9 Q. Now, there is a statement in the second
10 paragraph of Exhibit No. 16, "In that letter," referring
11 to the October 6, 2003, letter, "the group was given
12 seven days to object to his," Dr. Bybee's, "continued
13 practice in the community."
14 Was that true?
15 A. Yes.
16 Q. And as of April 6, 2004, the group had not
17 asserted any objection based upon the covenant not to
18 compete in Dr. Bybee's employment agreement. Was that
19 also true?
20 A. According to my attorney, yes.
21 Q. Do you have any reason to doubt the accuracy
22 of that statement?
23 A. No.
24 Q. Did Pocatello Dental Group assert any other
25 sort of objection aside from the covenant not to compete

13 (Pages 46 to 49)

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1 to your practice in an area?
2 A. No, they did not.
3 Q. Now, the letter goes on, "We therefore
4 understand based upon the language contained in Dr.
5 Bybee's employment agreement and the group's earlier
6 failure to object, the group has consented to his
7 continued practice in the community".
8 Did you ever hear anything from the group
9 disagreeing with that?
10 A. No, I did not.
11 Q. In the first full paragraph on the next page
12 there is a discussion of the group reaching its
13 employment agreement with Dr. Bybee. Do you see that?
14 A. Yes.
15 Q. Did you review this letter before your lawyer
16 sent it out?
17 A. Yes.
18 Q. You authorized him to send it, right?
19 A. Yes.
20 Q. It states, "the group has impermissibly
21 allowed another organization, i.e., InterDent Services,
22 Corporation("ISC"), to control the professional practice
23 of Dr. Bybee."
24 Do you agree with that?
25 A. Yes, I do.

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1 Q. Why, what did InterDent do?
2 A. InterDent restricted staff people, InterDent
3 took patients off of recall lists, a total of 900 were
4 put on a list called a 2028, or 875 to be exact. There
5 were also 600 additional patients that were put on lists
6 2029, 2030, and 2031 without consent or approval from a
7 doctor. They also did not allow me to choose the
8 materials that I would like to practice with. They
9 dictated what they would buy and what they would stock in
10 the office.
11 Q. And what materials did you ask for that
12 weren't provided?
13 A. Particular alginate materials; impression
14 materials; types of burs, which were for hand pieces;
15 hand pieces themselves; curing lights; overhead lights;
16 chairs, dental chairs.
17 Q. Did you make those requests in writing?
18 A. Yes.
19 Q. When?
20 A. Several times from probably 2002 onward.
21 Q. Did you make any of these requests after
22 October 3, 2003?
23 A. October 3, probably not.
24 Q. There is a statement further down in the
25 paragraph that ISC is directing and supervising the

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1 professional duties and work of Dr. Bybee. Did you mean
2 anything else there? Was anything else meant there
3 besides what you have already told me?
4 A. Let me see where you are at here.
5 MR. HAWKES: Show me where you are at, Scott.
6 (Mr. Kaplan indicates.)
7 A. Just read it.
8 Q. There is a sentence second from the last, I
9 believe, in that paragraph, "By bringing ISC in to
10 'direct and supervise' the professional 'duties and work'
11 of Dr. Bybee and the other dentists, the group has
12 'imposed' employment duties or constraints . . . which
13 would require Dr. Bybee to infringe the ethics of the
14 dental profession."
15 When you authorized your lawyer to send this,
16 did you have anything in mind there other than what you
17 already told me?
18 A. It's pretty much what I told you there.
19 Q. So what you told me is the issue of staff
20 hiring, right?
21 A. Yes.
22 Q. The no recall for patients who haven't been
23 paying, correct?
24 A. Well, that's one of the recall lists. There
25 were also patients taken off who were state kids and

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1 their parents are not state, and their parents have a bad
2 bill and the kids have been taken off recall, there is no
3 reason to be taking state kids off of recall.
4 Q. What do you mean by a state kid?
5 A. Medicaid. And you still have to inform the
6 doctor if you are taking them off for collection. The
7 doctor has to be notified as to whether the doctor wants
8 to follow up on collection.
9 Q. And you believe you weren't notified?
10 A. I was not notified.
11 Q. Then there was the issue of the materials. Is
12 that it, are those the areas?
13 A. Yes.
14 Q. Now, looking at the last paragraph on this
15 page, did you make some demands upon Pocatello Dental
16 Group?
17 A. Yes, there were written demands made to the
18 Pocatello Dental Group and to InterDent for improvements,
19 both in employees and putting all of those patient names
20 back on current recall lists.
21 Q. Looking at this letter, the last paragraph,
22 there are certain monetary demands made upon the
23 Pocatello Dental Group?
24 A. You didn't say that, okay.
25 Q. Did you make a demand upon them for \$96,000?

14 (Pages 50 to 53)

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1 A. Yes. We made this demand right here
2 (indicating) in one form or the other. As far as I know,
3 we have not heard a response to that.
4 Q. When you say this demand, you mean the demand
5 in the last paragraph on Page 2?
6 A. On Page 2, yes.
7 Q. And you haven't gotten any response yes or no?
8 A. Not that I'm aware of. As long as you brought
9 this up, the third paragraph on Page 1 says Dr. Bybee is
10 entitled to 31 percent. It is 33 percent.
11 Q. Your lawyer made a mistake here?
12 MR. HEARN: Yes, I made a mistake.
13 A. But he covered, he said assuming this percent
14 has not been modified.
15 Q. So your agreement back in '96 had 31 percent
16 and was that modified later?
17 A. It was modified.
18 Q. To 33?
19 A. Yes.
20 Q. Was it modified in writing?
21 A. Yes.
22 Q. Do you recall when that occurred?
23 A. That was '96; probably the spring of '97 or --
24 I don't recall the exact date. It was with Ken Davis.
25 Q. There is an allegation in Paragraph 14 of the

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1 amended complaint that states InterDent refused to
2 schedule patients for appointments with Drs. Romriell,
3 Misner and Bybee. As far as Drs. Misner and Bybee, is
4 that true to your knowledge?
5 A. Where are you at? If this is Pocatello Dental
6 Group stuff, these are documents I may not be --
7 Q. Right. I am just asking if you agree with it
8 or not.
9 A. May I read it?
10 Q. Yes, Paragraph 14 (indicating), the second
11 sentence.
12 A. I would agree with that.
13 Q. Then it's your belief that InterDent refused
14 to schedule patients for appointments with you and
15 Misner?
16 A. Some appointments, yes, they did refuse.
17 Q. What appointments were those?
18 A. Patients that they had taken off the list.
19 Patients would then call to get an appointment because
20 they would recognize that they hadn't been in for recall
21 for a while, and on the computer it says do not schedule.
22 Q. This was the payment issue?
23 A. Payment.
24 Q. And canceled appointments already made, did
25 that occur?

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1 A. Where did you take that -- oh.
2 Q. The last part of Paragraph 14.
3 A. Yes, where patients would have maybe missed
4 one or two appointments and they were taken off to be
5 further scheduled.
6 Q. So after missing one or two appointments they
7 would make further appointments?
8 A. They would try to make appointments and they
9 would be -- because on the computer it would say do not
10 schedule.
11 Q. So that's different than canceling an
12 appointment already made, correct?
13 A. Yes. I may not have any specific details, a
14 canceled appointment already made.
15 MR. KAPLAN: Let's mark this as the next
16 exhibit.
17 (Deposition Exhibit No. 19 marked for
18 identification.)
19 Q. Look at the second page of Exhibit No. 19.
20 You are welcome to read the first page first.
21 A. Thank you.
22 Q. Is it your signature on the second page of
23 Exhibit No. 19?
24 A. Yes.
25 Q. And do you recall when you signed this?

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1 A. No.
2 Q. Sometime this year?
3 A. Late, I am thinking more late last year, but I
4 don't know for sure.
5 Q. When you signed it, was your name already
6 handwritten in?
7 A. No, that's my printing.
8 Q. When you signed it, was it attached to any
9 other piece of paper?
10 A. I don't remember.
11 Q. When you signed it, were you told what it was
12 that you were signing?
13 A. Yes.
14 Q. What were you told?
15 A. Told to get the mail that's addressed to me,
16 to be delivered to me.
17 Q. Delivered to you where?
18 A. At the Pocatello Dental Group so I could open
19 my mail.
20 Q. So in your understanding it was to be
21 delivered at the office in the Pine Ridge Mall?
22 A. Yes. And it wasn't being, it was being
23 shipped to CBO in Vancouver or Portland, wherever.
24 Q. And who was it who told that you were signing
25 something to get the mail delivered to the Pine Ridge

15 (Pages 54 to 57)

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1 Mall?

2 A. I believe it was one of the Romriells, but I
3 don't remember.

4 Q. Either Dr. Dwight Romriell or Greg Romriell?

5 A. Yes.

6 MR. KAPLAN: I have nothing further for now.

7 EXAMINATION

8 BY MR. HAWKES:

9 Q. Dr. Bybee, at one point in the deposition you
10 made reference to your perception of InterDent's concern
11 with patient care and how it would compare, in your
12 perception, to concern with the dollars that would come
13 from that. What I'd like to fit into what you have
14 testified to is what is the fact in terms of your actual
15 observations as to InterDent's commitment to patient care
16 to the extent that it may contrast or conflict with
17 bottom line dollars?

18 A. Well, a lot of times we requested simple
19 things like letters be sent to new patients describing
20 our office, how the child would be taken care of, all the
21 procedures, such as parents wouldn't be allowed into the
22 operatories during treatment. Those type of things were
23 always listed as too expensive, we can't send those type
24 of letters out to patients.

25 The age of the equipment does not afford

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1 safety a lot of times with the children. We had a lot of
2 burrs that were breaking. And we requested different
3 burrs because with a child, those burrs break. You are
4 more apt to aspirate that than if you were working on an
5 adult. That little three millimeter burr, they are
6 snapping and breaking all the time right on the shaft and
7 that's a safety issue.

8 The hand pieces where the lights didn't work
9 so we are unable to see as well as you would like to see.
10 So all the equipment being antiquated and breaking down.
11 The lights, all the overhead lights, it's important in a
12 dental field that when you are looking down, the light
13 around you, the ambient light around you, is
14 approximately the same lumens as the dental light.
15 Otherwise you are going from a light field to a dark
16 field, which is very tough on eyes, which means you can
17 miss things in exams or those types of things, so you get
18 eye fatigue by the end of the day.

19 Q. You gave in your testimony some examples of
20 things you had discussed, letters written about quality
21 issues, and materials needed issues. I want to know
22 whether anybody at InterDent ever at any time came to you
23 or to one of the other dentists when you are within
24 earshot and said in substance or effect, look, we want to
25 sit down with you and show you why we don't have the

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1 money to do the things you want or where the money is
2 going, did that ever happen?

3 A. That never happened that I was aware of.

4 Q. Did you ever at any time receive anything from
5 InterDent short of a conversation that attempted to
6 explain to you why there were inadequate dollars to
7 provide the quality of practice you were used to?

8 MR. KAPLAN: Objection, no foundation.

9 MR. HAWKES: Let me back up.

10 Q. As of the time of the events that you
11 described prior to your leaving, if another young dentist
12 were to come to you and say, hey, based on your actual
13 experience right now with InterDent what can you tell me
14 about their commitment to patient safety and patient
15 quality, what would be your answer to that young
16 inquiring dentist?

17 A. My response to him would be to stay totally
18 and completely away from an InterDent office.

19 Q. Based on what you had seen there.

20 A. Yes.

21 Q. Some of the documents that we have seen as
22 lawyers in the mountains of paper here have words to the
23 effect that the Pocatello Dental Group was the premier or
24 top quality practice in the community --

25 A. Preeminent.

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1 Q. Do you feel that was true at one time in this
2 community?

3 MR. KAPLAN: Objection, foundation. Go ahead.

4 A. I don't think it was ever true; I think it
5 would be more prehistoric, would be what we would call it
6 now.

7 Q. That long ago.

8 A. No. Our practice, the practice at the
9 Pocatello Dental Group is more of a prehistoric practice
10 rather than a preeminent practice, just with the tools
11 and the technology, you know. You look at -- the
12 preeminent office would be the one that I put on 716
13 Yellowstone. That would be a preeminent dental office in
14 the community, with digital x-rays, computer record
15 keeping, state of the art sterilization.

16 Q. Is there anything, in fairness to InterDent,
17 that you believe they are doing better than anybody in
18 the community in terms of management of a dental
19 practice?

20 A. Other than chasing patients and doctors away,
21 I think they are doing that better than anybody else.

22 Q. From a standpoint of anything that would
23 relate to commitment to patient safety --

24 A. And care?

25 Q. Yes.

16 (Pages 58 to 61)

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1 A. No.
2 MR. HAWKES: I think that's all I have.
3 EXAMINATION
4 BY MR. KERL:
5 Q. Dr. Bybee, have you seen any improvement after
6 October 3, 2003, in the trained staff InterDent made
7 available for your practice or the practice of Dr. Bybee?
8 A. No. From October --
9 Q. Did it maintain the same inadequate status
10 after October 3 that it had before October 3?
11 A. They did hire I believe another employee, but
12 it takes about six months to train pediatric dental
13 assistants.
14 Q. So beginning on October 3, they didn't provide
15 you with adequate pediatrics trained staff?
16 A. No. I don't remember when that employee was
17 hired. There was one hired in later 2003, but I don't
18 recall the date.
19 Q. Did they provide you with the kinds of
20 equipment and supplies you needed to adequately care for
21 your children at any time after October 3, 2003?
22 A. The only change that they made in our office
23 was that they re-covered eight of our chairs.
24 Q. When you say chairs, which chairs?
25 A. The treatment benches and the treatment

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1 chairs, dental chairs.
2 Q. Put new upholstery --
3 A. Put new upholstery, Naugahyde, on it.
4 Q. It didn't improve the quality of the drill
5 bits, the quality of the hand pieces --
6 A. No. No hand pieces, no modern sterilization,
7 no curing lights, no fiber optic hand pieces. That's the
8 light that travels through the hand piece in order to
9 see, light up the cutting surface.
10 Q. Did InterDent continue to place patients on no
11 call or no recall lists after October 3, 2003?
12 A. I don't know that for sure.
13 Q. Did they allow you to treat any patients that
14 had been put on such lists prior to October 3, 2003?
15 A. I don't know.
16 Q. Did InterDent take any steps after October 3,
17 2003, to improve any of the deficiencies you experienced
18 prior to that time?
19 A. No, they did not.
20 Q. Did InterDent take any steps to improve your
21 ability to provide patient care to a standard that you
22 felt was ethically required of you at any time after
23 October 3, 2003?
24 A. No, they did not.
25 MR. KERL: That's all I have.

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EXAMINATION

1 BY MR. HEARN:
2 Q. I am going to focus on the very end, from June
3 11, to the present, has Pocatello Dental Group sent you
4 any patients?
5 A. Yes.
6 Q. Can you tell us the circumstances about any
7 patients that they may have sent you?
8 A. Well, the most recent would have been three
9 children yesterday that were seen by Dr. Greg Romriell on
10 Wednesday. He had trouble getting a couple of them to
11 cooperate, so he got one of them anesthetized and the
12 little patient wouldn't open for further treatment, so
13 Greg just turned to his assistant and said this needs to
14 be referred to Dr. Bybee. And they made an appointment
15 yesterday, I came in and anesthetized three areas in the
16 mouth, took two of the teeth out and did some other
17 filling work, and the boy was high-fiving me when he
18 left. And actually Dr. Romriell happened to be there to
19 see how the office was going at the time that the boy was
20 going out. We get a lot of referrals from the dental
21 group.
22 Q. Do you know, do you have an opinion about why
23 the dental group, the dentists in the dental group aren't
24 keeping those patients within the dental group and
25

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1 sending them to other dentists within the group and
2 sending them instead to you, do you have an opinion about
3 why that is going on? Just yes or no.
4 A. Yes.
5 Q. What is that opinion?
6 A. To treat children is different than to treat
7 adults. I treated adults for eight or five, probably
8 about ten years. Children take special care, special
9 time, and they can be a real -- they can really mess up a
10 general dental practice because they can start crying,
11 screaming, and act out of control. So in an adult
12 practice, even if you are a family practice, it's
13 sometimes very difficult to see children that misbehave.
14 It takes more time, more patience.
15 Q. Do you believe that the dentists within the
16 Pocatello Dental Group that you used to work with, based
17 upon your knowledge of them, would like to have any of
18 the patients you are treating in your practice in their
19 practice?
20 A. I don't think so. Talking with Dr. Greg
21 Romriell and Dr. Errol Ormond, no, they would as soon not
22 have children in their practice.
23 MR. HEARN: I have no further questions.
24
25

17 (Pages 62 to 65)

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RE-EXAMINATION

1 BY MR. KAPLAN:

2 Q. Now, Dr. Bybee, you wouldn't treat a patient
3 if you didn't feel you could do so ethically, correct?

4 A. No. I mean --

5 Q. You mean correct --

6 A. Restate it.

7 MR. KERL: It was a double negative.

8 Q. Let me ask it this way. Would you treat a
9 patient if you felt you could not do so ethically?

10 A. No.

11 Q. You would not treat such a patient?

12 A. If I didn't have the qualifications to treat a
13 patient?

14 Q. Right.

15 A. I would not treat them.

16 Q. And if you didn't have the equipment you felt
17 you needed to treat a patient, you wouldn't treat that
18 patient either, would you?

19 A. Well, there is adequate care and standard and
20 high care.

21 Q. Right. You wouldn't treat a patient if you
22 felt it wouldn't be ethical because your equipment was so
23 substandard; is that right?

24 A. Right.

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1 Q. So all these problems that you talked about
2 with burrs and lights and such, you thought you could
3 ethically continue to treat patients --

4 A. That's why we cut back, remember.

5 Q. You cut back but you continued to see
6 patients, correct?

7 A. (Witness nods head affirmatively.)

8 Q. Despite the problems with the burrs and the
9 lights?

10 A. What was I going to do?

11 Q. Well, you wouldn't --

12 A. Go out of business?

13 Q. You wouldn't treat a patient if you didn't
14 feel you could do so ethically?

15 A. I felt that we could get a standard of care to
16 provide for that patient. High quality, high standard,
17 no.

18 Q. So you were ethically able to treat the
19 patients you saw at Pocatello Dental notwithstanding
20 these issues with the lights and the burrs, correct?

21 A. I believe so, yes.

22 Q. Now, the issue of the burrs breaking, was that
23 communicated in writing to InterDent?

24 A. Probably.

25 Q. Do you recall one way or the other?

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1 A. No.

2 Q. And --

3 A. I recall telling Becky several times that we
4 need to stop ordering these burrs that are breaking, and
5 then she would do it for a while, and then pretty soon we
6 are back with the breaking burrs again.

7 Q. So sometimes you got burrs you liked and
8 sometimes you had the problem ones; is that right?

9 A. Right.

10 Q. And this occurred prior to October 3, 2003,
11 correct?

12 A. Yes.

13 Q. Now, I just want to make sure you didn't
14 misspeak. Mr. Kerl asked you if your staff problems
15 began on October 3, 2003 --

16 MR. KERL: I object to that.

17 Q. Did your problems you were having with your
18 staff begin on October 3, 2003?

19 A. No. The problems began in January that we
20 were going to be inadequately staffed.

21 Q. Of January 2003?

22 A. We were going to be inadequately staffed in
23 August of 2003 if we didn't start training people at that
24 time.

25 Q. Did you talk to Dr. Greg Romniell about your

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1 deposition in this case?

2 A. No.

3 Q. Did you talk to any Pocatello Dental Group
4 dentist about it?

5 A. No.

6 Q. Did you talk to Dr. Misner about your
7 deposition in this case?

8 A. Have I talked -- yes, I have talked to Russ
9 about it.

10 Q. What did you talk about?

11 A. He just wanted -- wished me good luck this
12 morning. He is in Texas.

13 Q. Did you discuss the substance of what you
14 expected the questions to be?

15 A. No. I relied on my attorney to tell me what
16 he thought they would be.

17 Q. Prior to today had you had any discussions
18 with Dr. Misner about what was going to be asked in this
19 deposition?

20 A. No.

21 Q. Have you discussed what's going to be asked in
22 his deposition?

23 A. No.

24 MR. KAPLAN: Thank you.

25 (Witness excused at 3:10 p.m.)

18 (Pages 66 to 69)

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1 STATE OF IDAHO)
2) ss.

3 County of Bannock)

4 I, PAUL D. BUCHANAN, CSR #7 and notary public in
5 and for said county and state, do hereby certify that the
6 facts as stated by me in the caption hereto are true; the
7 above and foregoing answers of the witness,

8 LARRY W. BYBEE,

9 To the interrogatories as indicated were made before me
10 by the said witness, after being first duly sworn to
11 testify the truth, and the same were thereafter reduced
12 to typewriting under my direction; that the above and
13 foregoing deposition, as set forth in typewriting, is a
14 full, true, and correct transcript of proceedings had at
15 the time of taking said deposition

16 I further certify that I am neither attorney nor
17 counsel for, nor related to, nor employed by any of the
18 parties to the action in which this deposition is taken,
19 and further that I am not a relative or employee of any
20 counsel employed by the parties hereto, or financially
21 interested in the action

22 GIVEN UNDER My Hand and Seal of Office on this
23 26th day of June, 2004.

24

25

Notary Public in and for
the State of Idaho

Transcript of the Testimony of **LARRY W. BYBEE**

Date: June 25, 2004

Case: POCA TELLO DENTAL v. INTERDENT SERVICE

Printed On: July 6, 2004

BUCHANAN REPORTING SERVICE
Phone: 208-233-0816

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